**In the Supreme Court of the State of Washington**

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| HOMESTREET, INC., HOMESTREET CAPITAL CORPORATION, and HOMESTREET BANK, | ) | No. 80544-0 |
| Petitioners, | ) | En Banc |
| v. | ) | Filed June 18, 2009 |
| STATE OF WASHINGTON, DEPARTMENT OF REVENUE, | ) | |
| Respondent. | ) | |

SANDERS, J.—HomeStreet, Inc., is a residential mortgage lender that services loans it sells or securitizes[1] to secondary lenders. It received tax deductions for the interest retained from these loans under RCW 82.04.4292 until the Department of Revenue (DOR) issued an order requiring HomeStreet, Inc., to pay business and occupation (B&O) taxes. HomeStreet, Inc., paid the taxes but then sued DOR for a refund. The trial court granted DOR's motion for summary judgment of dismissal, which was affirmed by the Court of Appeals. We now reverse the Court of Appeals

[1] Securitizing is the process of issuing mortgage-backed or mortgage-related securities. *HomeStreet, Inc. v. Dep't of Revenue*, 139 Wn. App. 827, 831, 162 P.3d 458 (2007).

and order DOR to refund the taxes to HomeStreet, Inc., plus statutory interest and costs.

*Facts and Procedural History*

HomeStreet Capital Corporation,[2] HomeStreet Bank,[3] and HomeStreet, Inc.[4] (collectively HomeStreet) are corporations organized and existing under the laws of the State of Washington, each with corporate headquarters in Seattle. HomeStreet Capital Corporation and HomeStreet Bank are wholly owned subsidiaries of HomeStreet, Inc.

HomeStreet originates mortgage loans by lending money to borrowers to purchase residential property. HomeStreet sells or securitizes about 90 percent of these loans on the secondary market to lenders such as the Federal National Mortgage Association (Fannie Mae), the Government National Mortgage Association (Ginnie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Oregon Housing Authority, and the Federal Home Loan Bank. HomeStreet sells the loans or securitized interests two ways: (1) it sells the *whole* loan or security in its entirety (servicing released) or (2) it sells a *portion* of the loan while retaining the right to service the loan or security and receive a portion of the interest (servicing retained).

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[2] Formerly Continental Mortgage Company, Inc.

[3] Formerly Continental Savings Bank.

[4] Formerly Continental, Inc.

HomeStreet also sells securities backed by mortgages or deeds of trust (mortgage-backed securities) guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae.

For mortgage-backed securities and loans sold on a service-retained basis, borrowers continue to make principal and interest payments to HomeStreet because HomeStreet still owns a portion of the loan and services the loans for the secondary market lenders. Borrowers usually do not know a secondary market transaction has occurred. HomeStreet collects the payments from the borrowers, pays the investors the principal and a portion of the interest, and retains a portion of the interest as a servicing fee. HomeStreet retains a portion of the interest only if the borrowers make interest payments. The money HomeStreet receives is not a flat fee but varies according to the size and length of the loan, interest rate fluctuations, and whether the borrower prepays or defaults on the loan.

When a loan is sold in its entirety the borrower makes principal and interest payments to the purchaser of the loan, and HomeStreet no longer receives any compensation for these loans from the borrower or the purchaser. This case does not involve service-released loans, and this is where the confusion arises for the dissent. The dissent conflates loans sold on a service-retained basis with loans sold on a service-released basis. HomeStreet does not maintain any connection with loans sold on a service-released basis. Unfortunately the dissent fails to distinguish between these two very different ways in which HomeStreet sells loans on the secondary

market. The dissent, in fact, fails to even mention this important difference. The dissent simply says HomeStreet "assigns" and sells the loans to third parties. Dissent at 7. In essence the dissent simplifies and misstates the facts.

The State imposes B&O tax on the privilege to do business in Washington. RCW 82.04.220. One statutory deduction is found in RCW 82.04.4292; however HomeStreet and DOR dispute the meaning of "amounts derived from interest." RCW 82.04.4292 provides,

> In computing tax there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, *amounts derived from interest* received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties

(Emphasis added.) RCW 82.04.4292 contains five elements:

1. The person is engaged in banking, loan, security, or other financial business;
2. The amount deducted was derived from interest received;
3. The amount deducted was received because of a loan or investment;
4. The loan or investment is primarily secured by a first mortgage or deed of trust; and
5. The first mortgage or deed of trust is on nontransient residential real property.

Clerk's Papers (CP) at 99. All five elements of the statute must be met for the taxpayer to receive a deduction. The second element is the only element in dispute herein.

In 1992 Continental, Inc., HomeStreet's predecessor, brought a petition seeking correction of a tax assessment and a refund of the taxes it paid to DOR. DOR issued Determination No. 92-403,[5] stating the five requirements of RCW 82.04.4292 were met and Continental should have received a deduction for the interest. DOR issued other determinations, including Determination No. 92-392,[6] which held that other financial institutions qualified for deductions on their retained interest. However in 1999 DOR issued Determination No. 98-218, which overruled Determination No. 92-392 "to the extent it states the portion of the interest income stream retained by the seller of a qualifying mortgage continues to be deductible under RCW 82.04.4292 despite the seller's lack of risk of interest rate fluctuation," changing its position on the deductions allowed under RCW 82.04.4292. CP at 112. HomeStreet was then audited by DOR and ordered to pay $20,224.72 in B&O tax on interest retained from 1997 through 2001 on mortgages it sold on a service-retained basis and mortgage-backed securities. HomeStreet paid DOR, and both parties entered into an agreement allowing HomeStreet to dispute the retained interest at a later date.

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[5] Determination No. 92-403 states, "[t]he payments of the retained interest at issue arises out of a relationship between the borrower and the taxpayers which is completely independent of the investors' purchase of a security representing another portion of the loan. We conclude that the amounts in question constitute interest within the meaning of RCW 82.04.4292." CP at 153.

[6] In Determination No. 92-392, the taxpayer originated, pooled, and sold the loans on the secondary market backed "under federal mortgage-backed guarantee programs." CP at 59.

HomeStreet sued DOR for a refund of the B&O tax it paid. In January 2006 the trial court granted DOR summary judgment of dismissal, opining DOR's interpretation of the statute was more consistent with the legislature's intent because the statutory deduction was intended to be limited.

The Court of Appeals affirmed the trial court, holding the income was "derived from interest" in its broadest sense but due only to the "*contractual relationship* with the purchaser of the loan for servicing the loans and that it is merely allowed to pay itself by 'retaining' part of the contract purchaser's interest payment in return." *HomeStreet, Inc. v. Dep't of Revenue*, 139 Wn. App. 827, 843, 162 P.3d 458, 460 (2007). It also held HomeStreet's interpretation of the statute was "overbroad, unreasonable, and ignores the requirement that we construe tax deduction statutes narrowly." *Id.* at 844. We granted review. 163 Wn.2d 1022, 185 P.3d 1194 (2008).

*Standard of review*

Statutory interpretation is a question of law reviewed de novo. *City of Seattle v. Burlington N. R.R.*, 145 Wn.2d 661, 665, 41 P.3d 1169 (2002). The primary objective of any statutory construction inquiry is "to ascertain and carry out the intent of the Legislature." *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24 (1991).

*analysis*

We are asked to determine what "amounts derived from interest" means in RCW 82.04.4292 and whether HomeStreet qualifies for a deduction under the statute.

We hold that HomeStreet is entitled to a tax deduction under RCW 82.04.4292 because the amounts it receives are derived from interest.

When interpreting a statute, we first look to its plain language. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). If the plain language is subject to only one interpretation, our inquiry ends because plain language does not require construction. *Id.; State v. Thornton*, 119 Wn.2d 578, 580, 835 P.2d 216 (1992). "Where statutory language is plain and unambiguous, a statute's meaning must be derived from the wording of the statute itself." *Wash. State Human Rights Comm'n v. Cheney Sch. Dist. No. 30*, 97 Wn.2d 118, 121, 641 P.2d 163 (1982). Absent ambiguity or a statutory definition, we give the words in a statute their common and ordinary meaning. *Garrison v. Wash. State Nursing Bd.*, 87 Wn.2d 195, 196, 550 P.2d 7 (1976). To determine the plain meaning of an undefined term, we may look to the dictionary. *Id.* "Where statutory language is plain and unambiguous, courts will not construe the statute but will glean the legislative intent from the words of the statute itself, regardless of contrary interpretation by an administrative agency." *Agrilink Foods, Inc. v. Dep't of Revenue,* 153 Wn.2d 392, 396, 103 P.3d 1226 (2005). "A statute that is clear on its face is not subject to judicial construction." *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001).

If the statute remains subject to multiple interpretations after analyzing the plain language, it is ambiguous. *Burton v. Lehman*, 153 Wn.2d 416, 423, 103 P.3d 1230

(2005). A statute is ambiguous if "susceptible to two or more reasonable interpretations," but "a statute is not ambiguous merely because different interpretations are conceivable." *State v. Hahn*, 83 Wn. App. 825, 831, 924 P.2d 392 (1996).

"[E]ach word of a statute is to be accorded meaning." *State ex rel. Schillberg v. Barnett,* 79 Wn.2d 578, 584, 488 P.2d 255 (1971). Whenever possible, statutes are to be construed so "'no clause, sentence or word shall be superfluous, void, or insignificant.'" *Kasper v. City of Edmonds*, 69 Wn.2d 799, 804, 420 P.2d 346 (1996) (quoting *Groves v. Meyers*, 35 Wn.2d 403, 407, 213 P.2d 483 (1950)). A court "is required to assume the Legislature meant exactly what it said and apply the statute as written." *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997). The dissent would have us believe that words in fact do not mean what they say. Dissent at 3. However we believe the better practice is to look at the words in the statute at issue to determine what the statute means.[7]

The term "interest" is not defined in RCW 82.04.4292 or in any tax statute in chapter 82.04 RCW but has been defined in several cases. "Interest is merely a charge for the use or forbearance of money." *Security Sav. Soc'y v. Spokane County*, 111

[7] The dissent engages in a lengthy analysis of other statutes in chapter 82.04 RCW but fails to actually analyze the statute at issue here. The dissent states, "[w]ith these statutes [(RCW 82.04.290(2), RCW 82.04.080)] in mind, it is obvious that the deduction in RCW 82.04.4292 does not apply to the amounts that HomeStreet claims are 'amounts derived from interest.'" Dissent at 7.

Wash. 35, 37, 189 P. 260 (1920). "[F]or an amount to constitute interest, it must be paid or received on an existing, valid, and enforceable obligation." *Thompson v. Comm'r*, 73 T.C. 878 (1980) (citing *Meilink v. Unemployment Reserves Comm'n*, 314 U.S. 564, 570, 62 S. Ct. 389, 86 L. Ed. 458 (1942)).

"Interest" is defined as "[t]he compensation fixed by agreement or allowed by law for the use or detention of money, or for the loss of money by one who is entitled to its use; esp., the amount owed to a lender in return for the use of borrowed money." Black's Law Dictionary 829 at para. 3. (8th ed. 1999). "Interest" is also defined as "the price paid for borrowing money generally expressed as a percentage of the amount borrowed paid in one year." Webster's Third New International Dictionary 1178 (2002).

The revenue at issue here is interest. It is the charge or price borrowers pay HomeStreet for borrowing money from HomeStreet. It is the amount owed to HomeStreet in return for the use of the borrowed money. The amount the borrowers pay to HomeStreet is on existing, valid, and enforceable contracts. The amount of money HomeStreet receives is not set but rather changes with the size and length of the loans, interest rate fluctuations, and the borrowers' ability to pay back the loan.

DOR argues HomeStreet is paid for the services it provides to the secondary lenders and not for the borrowers' use of the money. DOR asserts the revenue HomeStreet receives is a servicing fee even though it comes from the interest

payments. This is incorrect. Although the loans have been partially sold to secondary market lenders, the borrowers still borrowed the money from HomeStreet and HomeStreet still collects the payments, including the interest.

"Derived from" is not defined in the B&O tax statutes either. "Derived" is defined as "to take or receive esp. from a source." Webster's, *supra*, at 608. The Court of Appeals states the revenue at issue "is, in the broadest sense, 'derived from interest' because HomeStreet deducts it directly from the interest stream the loans generate." *HomeStreet*, 139 Wn. App. at 843. The State's expert witness, Earl Baldwin, said the income is "'derivative' of mortgage interest because the fee is deducted from the interest portion of the loan as provided by the agency-seller contract." CP at 748.

The revenue at issue here is received from a source, and the source is interest. The revenue is therefore "derived from interest" because it is taken from the interest the borrowers pay on their loans. When DOR argues the revenue is taken from the interest by HomeStreet as a servicing fee, it goes too far. Under the statute it is not essential to determine why the money is received or taken from a source. *See* RCW 82.04.4292. The statute requires that the amount only be "*derived* from interest." RCW 82.04.4292 (emphasis added). The statute does not say the amount must not be used for a servicing fee either. The plain meaning of the statute allows deductions for amounts received from interest, and HomeStreet qualifies for this deduction because it

receives interest from the loans.

Since the statute is unambiguous and subject only to one interpretation, it is unnecessary to look any further. DOR argues the legislature intended the statute to apply only to interest while asserting the words "derived from" are unnecessary and meaningless. Verbatim Report of Proceedings (VRP) at 27-28. DOR also argues "amounts derived from interest" means only interest-income based on other cases that interpret other statutes with similar wording. *Id*. at 32-33. But DOR fails to acknowledge that the legislature's purpose in enacting RCW 82.04.4292 "'was to stimulate the residential housing market by making residential loans available to home buyers at lower cost through the vehicle of a B & O tax [deduction] on interest income received by home mortgage lenders.'" *Dep't of Revenue v. Sec. Pac. Bank of Wash.*, 109 Wn. App. 795, 804, 38 P.3d 354 (2002) (alteration in original) (quoting CP at 33).

Moreover, "amounts derived from" is not meaningless or surplusage, as all words in a statute must be accorded their meaning. DOR cannot simply delete these three words from the statute to suit the meaning it wishes it to convey, nor should the dissent. *See* dissent at 11. This leads to an incorrect and gross misapplication of the statute as written. The legislature wrote the statute as it did, and we have no power to change it "even if we believe the legislature intended something else but failed to express it adequately." *Vita Food Prods., Inc. v. State,* 91 Wn.2d 132, 134, 587 P.2d 535 (1978). If the legislature meant only interest then it would not have included the

words "amounts derived from."

Tax exemptions and deductions must be narrowly construed. *Dep't of Revenue v. Schaake Packing Co.,* 100 Wn.2d 79, 83-84, 666 P.2d 367 (1983). Taxation is generally the rule and deductions or exemptions are the exceptions. *Budget Rent-a-Car of Wash.-Or. v. Dep't of Revenue*, 81 Wn.2d 171, 174, 500 P.2d 764 (1972) (citing *Fibreboard Paper Prods. Corp. v. State*, 66 Wn.2d 87, 401 P.2d 623 (1965)). The burden is on the party asserting the deduction to show it qualifies for a tax deduction. *Group Health Coop. of Puget Sound, Inc. v. Wash. State Tax Comm'n*, 72 Wn.2d 422, 433 P.2d 201 (1968).

DOR argues HomeStreet does not qualify for a deduction under RCW 82.04.4292 because tax statutes are to be narrowly construed, so the statute only applies to interest income received by the owners of first mortgage loans. However DOR, attempting to narrowly construe the statute, improperly deletes words from the statute. HomeStreet has met its burden to show it qualifies for a tax deduction because the revenue HomeStreet receives is clearly derived from interest.

*conclusion*

Under the plain meaning of RCW 82.04.4292 tax deductions are allowed for "amounts derived from interest," and the amount HomeStreet retained when servicing the loans is derived from the interest of the loans. We reverse the Court of Appeals and order DOR to refund the taxes at issue, plus statutory interest and costs.

AUTHOR:
Justice Richard B. Sanders

WE CONCUR:
Chief Justice Gerry L. Alexander
Justice Susan Owens
Justice Charles W. Johnson
Justice James M. Johnson
Justice Debra L. Stephens